

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ALLAN ROTHSTEIN,

Plaintiff(s),

v.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, SHERIFF JOE LOMBARDO,

Defendant(s).

Case No. 2:15-CV-1012 JCM (GWF)

ORDER

Presently before the court is petitioner Allen Rothstein's motion to remand to state court. (Doc. # 12). Respondents Las Vegas Metropolitan Police Department ("LVMPD") and Joe Lombardo filed a response (doc. # 14), and petitioner filed a reply. (Doc. # 15).

I. Background

Respondent LVMPD declined to renew petitioner Rothstein's concealed carry weapons ("CCW") permit based on his status as a convicted felon in Illinois. Rothstein filed a petition for a writ of mandamus in the Nevada district court pursuant to Nevada Revised Statute ("NRS") §§ 34.160 and 202.3663. He seeks a writ compelling LVMPD to renew his license. Respondents subsequently removed the case to this court. (Doc. # 1).

II. Legal Standard

Under 28 U.S.C. § 1441, "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a).

Removal of a case to a United States district court may be challenged by motion. 28 U.S.C. § 1441(c). A federal court must remand a matter if there is a lack of federal jurisdiction. *Id.* Removal statutes are construed restrictively and in favor of remanding a case to state court.

1 *See Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09 (1941); *Gaus v. Miles, Inc.*, 980
 2 F.2d 564, 566 (9th Cir.1992). On a motion to remand, the removing defendant faces a strong
 3 presumption against removal, and bears the burden of establishing that removal is proper.
 4 *Gaus*, 980 F.2d at 566–67; *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403–04 (9th
 5 Cir.1996).

6 "As a general rule, the presence or absence of federal question jurisdiction is governed by
 7 the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a
 8 federal question is presented on the face of the plaintiff's properly pleaded complaint." *ARCO*
 9 *Envtl. Remediation, L.L.C. v. Dep't of Health & Env'tl. Quality*, 213 F.3d 1108, 1113 (9th Cir.
 10 2000). "The 'mere presence of a federal issue in a state cause of action does not automatically
 11 confer federal-question jurisdiction.'" *HSBC Bank USA, N.A. v. Hazel Frederick et al.*, 2011 U.S.
 12 Dist. LEXIS 127966 at *4 (D. Nev. Nov. 3, 2011) (*quoting Merrell Dow Pharmaceuticals, Inc. v.*
Thompson, 478 U.S. 804, 813 (1986)).

13 **III. Discussion**

14 Rothstein's petition does not present a federal question. Respondents argue that under
 15 *Merrell Dow*, jurisdiction may be found from a complaint if adjudication of a state law claim
 16 would turn on a federal constitutional or other important federal question, even where only state
 17 law issues have been pled. *See* 478 U.S. at 808. Relying on their assertion that Rothstein's petition
 18 is "littered throughout with references to . . . the Second Amendment and . . . 18 U.S.C. § 924,"
 19 respondents argue that the relief petitioner seeks from denial of his CCW permit application turns
 20 on constitutional and other important federal questions. (*See* doc. # 14).

21 Respondents misunderstand or misrepresent the nature of Rothstein's petition. Rothstein
 22 seeks judicial review¹ of LVMPD's denial of his application for a CCW permit under NRS §
 23 202.3657. While the petition does make a passing reference to his right to bear arms under the
 24 Second Amendment of the U.S. Constitution, he does not assert any cause of action for violation
 25 of that right under any federal statute. Indeed, NRS § 34.160 does not authorize a petitioner to
 26 bring such a claim in a petition for writ of mandamus. *See* NEV. REV. STAT. § 34.160.

27
 28 ¹ NRS § 202.3663 provides that the exclusive vehicle for judicial review of denial of an
 application for a CCW permit is the filing of a petition in the district court for the county in which
 the applicant filed the application. *See* NEV. REV. STAT. § 202.3663.

1 Respondents argue that Rothstein's discussion of federal gun law under 18 U.S.C. §
2 921(a)(20) presents a "substantial federal question" under *Merrell Dow*. See 478 U.S. at 808. This
3 argument is misplaced. Section 921(a)(20) provides that "[w]hat constitutes a conviction of such
4 a crime shall be determined in accordance with the law of jurisdiction in which the proceedings
5 were held." 18 U.S.C. § 921(a)(20).

6 Rothstein's petition offers the text of § 921(a)(20) for two reasons. He contends that the
7 federal statute shows (1) that Nevada law is not consistent with federal law and (2) LVMPD cannot
8 claim that issuance of Rothstein's CCW permit is barred under federal law. (See doc. # 1 at 11).
9 Petitioner does not claim that Nevada law violates federal law or ask the court to resolve federal
10 law. Resolution of the petition does not therefore require the court to answer any federal question.
11 "[T]he mere presence of a federal issue in a state cause of action does not automatically confer
12 federal question jurisdiction." *Merrell Dow*, 478 U.S. at 813.

12 IV. Conclusion

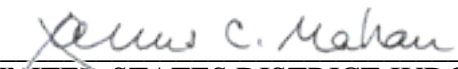
13 Rothstein's petition presents no federal question, and this court finds no other basis on
14 which it may exercise subject matter jurisdiction. Petitioner's motion to remand will be granted.

15 Accordingly,

16 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that petitioner Allen
17 Rothstein's motion for remand to state court (doc. # 12) be, and the same hereby is, GRANTED.

18 IT IS FURTHER ORDERED that this case be, and the same hereby is, REMANDED to
19 state court due to this court's lack of subject matter jurisdiction.

20 DATED March 25, 2016.

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23 UNITED STATES DISTRICT JUDGE
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